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FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS
AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF
THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION

Written statement submitted by Human Rights Watch, a non-governmental
organization in special consultative status

The Secretary-General has received the following written statement
which is circulated in accordance with Economic and Social Council
resolution 1296 (XLIV).

[6 March 1997]

Mass exoduses in Africa

1. Faced with the increasing complexity of refugee and displaced situations in Africa - spreading regional conflicts, mixed refugee/combatant populations, large weapons flows, violence, and forced conscription in refugee camps - the international community appears to be retreating from the protection of refugee rights. At the same time, there is a waning receptivity among African Governments to host the massive refugee flows. The Office of the United Nations High Commissioner for Refugees (UNHCR) and African Governments must respect the rights of refugees, displaced persons and asylum seekers, and reaffirm their commitment to their fundamental right to non-refoulement. Despite the inherent difficulties, the international community must be prepared to institute screening processes to separate refugees from human rights violators and combatants. The United Nations must strengthen its framework for the protection of the internally displaced, and ensure that its programmes, which are currently run on an ad hoc basis, are not manipulated by Governments.

2. Violence and displacement have escalated in the Great Lakes region since the 1994 Rwandan genocide. The struggles for political control in Rwanda, Burundi and Zaire have become integrally linked, each able to destabilize prospects for peace in the other. The international community has been unwilling to devote the necessary political or financial resources for a regional solution, responding only at the peak of the region's emergency crises. UNHCR has watched the forced repatriation of Rwandan and Burundian refugees with little protest. The return of these refugees has not been followed with the necessary monitoring and assistance to ensure permanent reintegration. Following the mass return of Rwandan refugees in late 1996, those remaining in the United Republic of Tanzania and Zaire, and the Zairian internally displaced, have been all but forgotten. The international community must end the refoulement of refugees; assist the remaining refugee and displaced populations; institute screening procedures to separate killers from refugees; and make a sustained commitment to political solutions in the region.

3. In the Sudan, government troops and militias have caused massive displacement and death for years by targeting southern and now eastern civilians in asset-stripping raids. The rebel Sudan People's Liberation Army (SPLA) has been responsible for similar raids. The Government has blocked United Nations access to hundreds of thousands of needy displaced for counter-insurgency reasons. The United Nations should insist on access to areas of need, including the Nuba Mountains. It should resist government manoeuvres to transfer the United Nations Operation Lifeline Sudan (Southern Sector) to Government-controlled territory; that transfer would politicize and cripple the programme, causing thousands of internally displaced persons to die or flee. The United Nations must also take steps to prevent SPLA forcibly recruiting children, particularly from Kenyan and Ethiopian refugee camps.

4. In Kenya, thousands remain internally displaced as a result of State-sponsored "ethnic" violence unleashed against ethnic groups associated with the political opposition after the Government was forced to concede to a multi-party system in 1991. Although some have returned, many remain displaced fearing violence or because their land is illegally occupied. Government officials have consistently harassed the displaced, including through forced dispersals, while perpetrators have enjoyed complete impunity. A UNDP programme for the displaced ended after two years in 1995, largely due to government obstruction. Abandoned by the international community and their Government, this displaced population is destined to become a permanently disenfranchised underclass. The Government must provide security for the displaced to return, reverse illegal land transactions and punish the perpetrators.

5. In 1995 South Africa ratified the Convention relating to the Status of Refugees and discussion for new legislation to provide for these commitments is currently under way. Large numbers displaced by conflict or seeking a better life are migrating to South Africa, and one result has been an upsurge in xenophobia. Concerns surrounding the current treatment of refugees include the lack of due process in processing asylum applications; police brutality and corruption; and the failure of the police to protect non-citizens from violence by the local population. Given the public feeling against foreigners, there is a danger that the Government might give way to demands

for restrictive controls on immigration and asylum which violate international law. The rights of asylum applicants, refugees and non-citizens must be respected by South Africa.

Accountability in the former Yugoslavia

6. Accountability for human rights abuses is crucial for the establishment of the rule of law in Bosnia and Herzegovina and for the implementation of all aspects of the Dayton peace agreement. However, local authorities have failed to investigate and prosecute attacks on ethnic minorities - including arbitrary detention, beatings by police resulting in serious injuries and death, widespread evictions, attacks upon returnees, destruction of housing - that have occurred since the signing of the agreement. The police are widely believed to be responsible for the majority of human rights violations - either through acts of commission or omission.

7. While many local courts are functioning, the civil and criminal justice systems continue to serve as instruments of the main political parties. When a judge does rule in the interest of injured parties, the decision is rarely honoured by the police and local authorities, and there is evidence of collusion between the courts and the local police, housing and other authorities in undermining civil protections for minorities.

8. Those who remain in areas where they are not the ethnic majority or who are would-be returnees have little confidence that they can live in majority communities without fear. Even if their physical security were not immediately threatened, discrimination in housing, employment, health care and political participation make a normal existence impossible.

9. The Commission on Human Rights should make accountability for police and government officials a top priority. We urge the Commission to call on the Office of the High Representative, the International Police Task Force, and the Organization for Security and Cooperation in Europe to devise a plan to sanction local and entity Governments which do not hold abusive officials accountable. This combined effort must ensure compliance with the human rights standards established by the Dayton agreement.

Sexual violence

10. Despite evidence of widespread sexual violence against women in countries around the world, many Governments are failing to investigate and prosecute these crimes vigorously. Women of every age, race, nationality, religion and ethnicity are sexually assaulted, often by men they know in their own communities, and Governments respond with indifference. Notwithstanding statutory prohibitions against rape, Governments fail adequately to monitor, investigate and punish crimes against women. Women must overcome flawed investigatory procedures and significant official obstacles to justice, including police hostility to their complaints, pervasive biases held by police, prosecutors, and judges that women are to blame for such attacks or that sex crimes are serious only if committed against chaste women.

11. In the Russian Federation, police often refuse to accept complaints from survivors of sexual violence and delay collection of vital medical evidence,

thereby preventing the successful prosecution of complaints. Invasive police investigations into rape survivors' sexual history violate women's privacy rights and discourage women from pursuing complaints. Women also are prevented from obtaining forensic evidence of rape because police neglect to inform them of this necessary step. In Peru, survivors of rape face a judicial system that ill serves them. Rapists can be absolved of their crimes by marrying their victims. Survivors of rape are obliged to pay for examinations by State forensic doctors or see their cases dropped. State forensic doctors often perform cursory, incomplete examinations that prove insufficient to establish the crime. In South Africa, the police and courts are unsympathetic to rape survivors, and many in senior positions remain hostile to reform efforts. Rape and sexual assault cases are poorly investigated; women are treated by law enforcement as if they are on trial rather than the accused, and the great majority of cases either fail to reach trial or end in acquittals.

12. International human rights law obliges Governments to protect all citizens without discrimination from human rights abuses; to investigate and remedy violations of citizens' rights by private actors; and to refrain from committing human rights violations directly. Yet, in many countries, law enforcement authorities do not seriously pursue crimes of sexual violence and allow gender bias to compromise the delivery of justice. Many laws treat rape and other sexual assaults as crimes against honour or dignity rather than as attacks on women's physical integrity. Some countries' laws exempt rape in marriage from criminal sanction or exculpate rapists who marry their victims and thus minimize the harm to their reputations.

13. Human Rights Watch calls on the Commission on Human Rights to urge Governments to criminalize rape and other sexual assaults explicitly as crimes against the person; to repeal statutes that allow rapists to marry their victims to avoid criminal penalties or that exempt marital rape from punishment; to vigorously investigate and prosecute sexual violence; to standardize training of forensic doctors and of collection of forensic evidence of sexual violence; to provide counselling and medical services related to sexual violence; and to ensure training for judicial and law enforcement agents to eliminate gender bias from the investigation and prosecution of sexual violence.

14. The United Nations should initiate and promote efforts to end sexual violence and to guarantee women access to justice in all its human rights activities, including renewing the mandate of and providing sufficient resources to the Special Rapporteur on violence against women. The Commission should also provide technical assistance to Governments on ways to reform statutory discrimination and to improve the administration of justice with regard to sexual violence against women. Finally, we recommend that the Commission urge the Commission on Crime Prevention and Criminal Justice to develop procedural and evidentiary standards for investigating violence against women.

Human rights institutions in Hong Kong

15. Human Rights Watch is very concerned about the status of the national institutions for the promotion and protection of human rights in Hong Kong

after 1 July 1997, when the British colony formally becomes a Special Administrative Region of China. We are alarmed by the fact that on 22 February 1997, the Standing Committee of the National People's Congress, the Chinese parliament, adopted a decision to abolish or amend 24 Hong Kong laws effective 1 July, including key sections of the territory's Bill of Rights. The Commission should urge the United Kingdom Government to establish an independent human rights commission in Hong Kong before the transfer of sovereignty to receive complaints regarding human rights abuses, to promote human rights awareness and education, and to monitor the state of human rights in Hong Kong.
